EQUITY: INJUNCTION TO RESTRAIN SALE: ILLEGAL TAX.—Since the decision of the Supreme Court of California in the case of Crocker v. Scott,[1] there has been considerable uncertainty as to when or whether the remedy by injunction is available to restrain the enforcement of an illegal tax. In the case of *Las Animas and San Joaquin Land Company v. Preciado*[2] just decided by the Supreme Court in bank, the court has defined and limited the extent of the rule announced in the Crocker case. Reversing the opinion expressed in department the court affirmed the judgment granting the injunction and differentiated the cases where equity will step in and where it will not, adopting as the true test the rule enunciated by Mr. Justice Field in his opinion in the case of Pixley v. Huggins.[3] The opinion which is by Mr. Justice Henshaw suggests that each of the cases in which an injunction is sought must rest for its determination on its own particular facts, but certain considerations of general application are announced. One is, that where there is an equitable duty to pay the taxes the court should be reluctant to enjoin its collection, and should refer the litigant to law for relief; another is that the court should be slow to disturb the fiscal system by granting an injunction. But where these considerations are absent, and extrinsic evidence would be necessary to show the invalidity of the tax, then equity may exert its long established right to prevent or remove a cloud on title, which was the jurisdiction relied on by plaintiff in the case under discussion.

L. J. K.

EVIDENCE: EXCEPTION TO HEARSAY RULE: ENTRY OF CHILD'S BIRTH IN FAMILY BIBLE.—Is an entry in the family Bible always admissible evidence under the California decision? If a mother with actual knowledge of the facts testifies to the date of the birth of her child, may the entry in the family Bible be allowed as further evidence of the same fact? Or is such an entry only admissible in case there are no available witnesses to testify to the facts contained in the entry? The Oregon court in *State* v. *Goddard*,[1] in deciding the entry of a child's birth was admissible evidence, despite the presence of the mother in court as a witness, state that the final holding of the California court was in accord with this conclusion.

The California decisions[2] are conflicting, but the last word of

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[1] (1906) 149 Cal. 575, 87 Pac. 102.
[2] (April 1, 1914) 47 Cal. Dec. 503.
[3] (1860) 15 Cal. 127.

[1] (Jan. 27, 1914), 138 Pac. 243, (Ore.)

[2] People v. Ratz, (1896) 115 Cal. 132, 46 Pac. 915, held Bible entry admissible as evidence. People v. Mayne, (1897) 118 Cal. 516, 50 Pac. 654, 62 Am. St. Rep. 256 held Bible entry not admissible and admission reversible error. People v. Slater, (1898) 119 Cal. 620, 623, 51 Pac. 957, held Bible entry properly admitted to supplement testimony of father and mother as to age of child. People v. Vann, (1900) 129 Cal. 118, 61 Pac. 776, held Bible entry might be used as memorandum to refresh recol-

the Supreme Court[3] suggests that it would not admit an entry in the family Bible as evidence of a child's birth to supplement the testimony of available witnesses with actual knowledge of the facts. In a more recent case the intimation of this decision is put into positive form by the District Court of Appeal, which declares the California rule to be the opposite of that stated by the principal case.

The admission of entries in the family Bible is a pedigree exception to the hearsay rule.[5] The guaranty of trustworthiness of such entries is found in the fact that they are "openly exhibited and well known to the family" and may well "be presumed to possess that authenticity which is derived from the tacit and common assent of those interested in the facts which they record."[6] The need for the exception is clear where the facts of the entry are such that no living person has actual knowledge of them. But it is difficult to find any principle of necessity to justify the exception, where competent witnesses are available to testify in open court to the facts stated in the entry. Clearly in such cases the better rule would require the calling of the witnesses and the exclusion of the entries. If no person with actual knowledge of the facts can be found, the principle of necessity applies to warrant the exception. The cases often limit the exception to the pedigree facts of a pedigree case.[7] The better way, however, is to frame the rule in terms of necessity, so that the Bible entry, as to the age of the prosecutrix, may be admitted in prosecutions for statutory rape where there are no available witnesses to testify to the facts contained in the entry.[8] The reasoning of the Oregon court ignores all considerations of necessity and so mistakes the purpose and scope of the exception. It may be urged that the Oregon and California codes make Bible entries primary evidence, because they do not characterize such entries as secondary evidence. The answer is that this kind of evidence is secondary in its inherent nature; and in making entries in the Bible "evidence", the legislature must be considered as merely putting the common law rule into the form of a statute. The principal case would seem wrong both in its conclusion as to the present California rule in regard to Bible entries and in its analysis of the principles underlying the rule itself. C. S. J.

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lection and approved rule of People v. Mayne, supra. People v. Balmain, (1911) 16 Cal. App. 28, 116 Pac. 303, dictum, Bible entry not admissible approving People v. Mayne, supra.

[3] People v. Vann, supra.

[4] People v. Balmain, supra.

[5] Wigmore on Evidence, sections 1495, 1496.

[6] North Brookfield v. Warren, (1860) 16 Gray 174 (Mass.)

[7] People v. Mayne, supra; Code of Civil Procedure, sec. 1870, subd. 13.

[8] Note 41 L. R. A. 449.